

to be made, or who knowingly solicits or knowingly causes the solicitation of, an ex parte communication which violates the prohibitions contained in paragraph (b) of this section may, on that basis alone, be deemed to have engaged in unprofessional conduct of the type proscribed by 17 CFR 14.8(c).

(3) Any Commissioner, Administrative Law Judge or Commission decisional employee who knowingly makes or knowingly cause to be made, or who knowingly solicits or knowingly causes the solicitation of, an ex parte communication which violates the prohibitions contained in paragraph (b) of this section may, on that basis alone, be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735–3(b)(3).

(e) *Applicability of prohibitions and sanctions against ex parte communications.* (1) The prohibitions of this section against ex parte communications shall apply:

(i) To any person who has actual knowledge that a proceeding has been or will be commenced by order of the Commission; and

(ii) To all persons after public notice has been given that a proceeding has been or will be commenced by order of the Commission.

(2) The prohibitions of this section shall remain in effect until a final order has been entered in the proceeding which is no longer subject to review or reconsideration by the Commission or to review by any court.

(3) Nothing in this section shall constitute authority to withhold information from Congress.

(Sec. 4, Pub. L. 94–409, 90 Stat. 1246, 1247 (5 U.S.C. 551(14), 556(d) and 557(d)); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975))

[42 FR 13700, Mar. 11, 1977, as amended at 60 FR 54801, Oct. 26, 1995]

§ 10.11 Appearance in adjudicatory proceedings.

(a) *Appearance*—(1) *By non-attorneys.* An individual may appear pro se (in his own behalf), a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, an officer or employee of a State Commission or of

a department or political subdivision of a State may represent the State Commission or the department or political subdivision of the State in any proceeding.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this title, may represent parties in proceedings before the Commission.

(b) *Debarment of counsel or representative by administrative law judge during the course of a proceeding.* (1) Whenever, while a proceeding is pending before him, the Administrative Law Judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Administrative Law Judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An immediate appeal to the Commission may be sought from any such order, pursuant to the terms of § 10.101, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the Administrative Law Judge may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(2) Whenever the Administrative Law Judge has issued an order precluding a person from further acting as counsel for representative in the proceeding, the Administrative Law Judge within a reasonable time thereafter, shall submit to the Commission a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Commission should take respecting the appearance of such person as counsel or representative in other proceedings before the Commission.

§ 10.12 Service and filing of documents; form and execution.

(a) *Service by a party or other participant in a proceeding.* (1) When one party serves another with documents under these rules, a copy must be served on all other parties as well as filed with

the Proceedings Clerk. Similarly, when a person files a document with the Office of Proceedings, the person must serve a copy of the document on all other parties.

(2) *How service is made.* Service shall be made by:

- (i) Personal service;
- (ii) First-class or a more expeditious form of United States mail or an overnight or similar commercial delivery service;
- (iii) Facsimile (“fax”); or
- (iv) Electronic mail (“email”).

(3) Service by email or fax shall be permitted at the discretion of the Presiding Officer, with the parties’ consent. The consent of a party must specify the email address or fax number to be used. Signed documents that are served by email must be in PDF or other non-alterable form.

(4) Service will be complete at the time of personal service; upon deposit in the mail or with an overnight or similar commercial delivery service of a properly addressed document for which all postage or delivery service fees have been paid; or upon transmission by fax or email. Service by email or by fax will not be effective if the party making service learns that the attempted service did not reach the person to be served.

(5) Where service is effected by mail or a commercial delivery service (but not by fax or email), the time within which the person being served may respond shall be extended by five (5) days.

(6) *Statement of service.* A statement of service shall be made by filing with the Proceedings Clerk, simultaneously with the filing of the document, a statement signed by the party making service or by his attorney or representative that:

- (i) Confirms that service has been made,
- (ii) Identifies each person served,
- (iii) Sets forth the date of service, and
- (iv) Recites the manner of service.

(b) *Service of decisions and orders.* A copy of all rulings, opinions and orders shall be served by the Proceedings Clerk on each of the parties.

(c) *Designation of person to receive service.* The first page of the first docu-

ment filed in a proceeding by a party or participant must include the name and contact information of a person authorized to receive service on the party or participant’s behalf. Contact information must include a post office address and daytime telephone number, and should also include the person’s fax or email. Thereafter service of documents shall be made upon the person authorized unless service on the party himself is ordered by the Administrative Law Judge or the Commission, or unless no person authorized to receive service can be found, or unless the person authorized to receive service is changed by the party upon due notice to all other parties.

(d) *Filing of documents with the Proceedings Clerk.* (1) All documents which are required to be served upon a party shall be filed concurrently with the Proceedings Clerk. A document shall be filed by delivering it in person or by first-class mail or a more expeditious form of United States mail or by overnight or similar commercial delivery service to Proceedings Clerk, Office of Proceedings, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or faxing the document to (202) 418-5532; or emailing it to *PROC_Filings@cftc.gov* in accordance with the conditions set forth in paragraph (a)(2) of this section.

(2) To be timely filed under this part, a document must be delivered in person; mailed by first-class or a more expeditious form of United States mail or by an overnight or similar commercial delivery service; or faxed or emailed to the Proceedings Clerk within the time prescribed for filing.

(e) *Formalities of filing.* (1) An original of all documents shall be filed with the Proceedings Clerk. If a party files a document with the Proceedings Clerk by fax or email, they should not also send paper copies.

(2) *First page.* The first page of all documents filed with the Proceedings Clerk must include the Commission’s name, the docket number, the title of proceeding, the subject of the document, and the name of the person on whose behalf the document is being filed. In subsequent filings, the case title may be abbreviated by listing the name of the first respondent, followed

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by “et al.” In the complaint, the title of the action shall include the names of all the respondents, but in documents subsequently filed it is sufficient to state the name of the first respondent named in the complaint with an appropriate indication of other parties.

(3) *Format.* Documents must be legible and printed on normal white paper of eight and one half by eleven inches. The typeface, margins, and spacing of all documents presented for filing must meet the following requirements: all text must be 12-point type or larger, except for text in footnotes which may be 10-point type; all documents must have at least one-inch margins on all sides; all text must be double-spaced, except for headings, text in footnotes, or block quotations, which may be single-spaced. Emailed documents must be in PDF or other non-alterable form.

(4) *Signatures.* (i) The original of all documents must be signed by the person filing the same or by his duly authorized agent or attorney.

(ii) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(A) He has read the document and knows the contents thereof;

(B) If executed in any representative capacity, it was done with full power and authority to do so;

(C) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(D) The document is not being interposed for delay.

(5) *Length and form of briefs.* All briefs of more than fifteen pages shall include an index and a table of cases and other authorities cited. No brief shall exceed 50 pages in length without prior permission of the Presiding Officer or the Commission.

(f) *Official docket.* The Proceedings Clerk will maintain the official docket for each proceeding. The official docket is available for public inspection in the Commission’s Office of Proceedings.

[41 FR 2511, Jan. 16, 1976, as amended at 41 FR 28260, July 9, 1976; 60 FR 54802, Oct. 26, 1995; 63 FR 55791, Oct. 19, 1998; 73 FR 63360, Oct. 24, 2008; 78 FR 12935, Feb. 26, 2013]

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Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions

§ 10.21 Commencement of the proceeding.

An adjudicatory proceeding is commenced when a complaint and notice of hearing is filed with the Office of Proceedings.

[63 FR 55791, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998]

§ 10.22 Complaint and notice of hearing.

(a) *Content.* The complaint and notice of hearing shall include:

(1) The legal authority and jurisdiction under which the hearing is held;

(2) The matters of fact and law to be considered and determined.

The complaint shall set forth the matters of fact alleged therein in such manner as will permit a specific response to each allegation. The notice shall notify the respondent of his right to a hearing and shall specify the time required by § 10.23 of these rules for the filing of an answer and the consequence of failure to file an answer.

(b) *Service.* The Proceedings Clerk shall give appropriate notice to each respondent by serving them with a copy of the complaint and notice of hearing. Service may be made in person, by confirmed telegraphic notice, or by registered mail or certified mail, addressed to the last known business or residence address of the person to be served or the address of his duly authorized agent for service. If a respondent is not found at his last known business or residence address and no forwarding address is available, additional service may be made, at the discretion of the Commission, as follows:

(1) By publishing a notice of the filing of the proceeding and a summary of the complaint, approved by the Commission or the Administrative Law Judge, once a week for three consecutive weeks in one or more newspapers having a general circulation where the respondent’s last known business or residence address was located and, if ascertainable, where the respondent is believed to reside or be doing business currently; and